IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3319 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

DHIRENDRA TRAMBAKLAL JOSHI

Versus

DIRECTOR

Appearance:

MR GM JOSHI for Petitioner

Mr. V.B.Gharania, Assistant Government Pleader for Respondent No. 1, 2.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 19/11/98

ORAL JUDGEMENT

This petition has been filed for quashing the order dated 16.3.87 passed by the Secretary, Health and Family Welfare Department, Government of Gujarat compulsorily retiring the petitioner from service under Rule 6(6) of the Gujarat Civil Service (Discipline and Appeal) Rules, 1971 and to reinstate him with all

consequential benefits as if he was in regular service of the respondents prior to the date of his compulsory retirement.

2. The petitioner was appointed as Resident Medical Officer, class II by a letter dated 28th July, 1966 by the respondent no.1. Lateron he was confirmed. The petitioner while working as District Ayurvedic Officer Class II at Amreli, was served with a charge-sheet in the month of February, 1980 on the imputation that while the petitioner was working as District Ayurved Officer class II with District Panchayat, he was on deputation for the period between 1968-69 and granted pay scale of qualified Vaidya of Rs.160-190-8-230-EB-8-310-EB-20-370 and made wrong fixation for certain unqualified Vaidyas. The petitioner fixed the said pay scale for the Vaidyas under Ayurvedic Dispensary of the District Panchayat, Rajkot with effect from 1.11.65 in the revised pay scale of Rs. 160-370 because all seven Vaidyas out of those Vaidyas who were unqualified in view of the direction issued by the letter of the Director dated 11.11.68 and considered in the qualification of Ayurved Visharad and pay scale of qualified were fixed and thus, committed serious administrative error and caused huge financial loss to the Government. The petitioner was further charged by a letter dated 14th April, 1983 on the following allegations.

(1) He has behaved with the hospital staff in rude, vengeanceful and insulting manner.
(2) He has shown discriminatory attitude by issuing wrong memorandum to the staff which is not obeying to his wishes for harassing them and given undue relaxations to those which is liked by him.
(3) He has committed breach of rule 3(2) of the Gujarat Service (Conduct) Rules, 1971 by not keeping his behaviour with the female employees under his control befitting the Government Gazetted Officer.
(4) Though he was on duty for 24 hours as Resident Medical Officer, he has shown gross negligence and neglect and carelessness by not attending the emergency situation and thereby he has committed breach of rule 3(2) of the Gujarat State Service (Conduct) Rules, 1971.
(5) By arranging Mahefils/parties at the Government quarter which are not befitting to the Government Officer, he has committed breach of rule 3(3) of the Gujarat State Service (Conduct) Rules.

(6) Though he is not in the teaching staff of the Ayurved College, made unauthorised interference in the administrative matters of the College and created groupism amongst the students and thereby he has committed an act of misconduct as a Gazetted officer.

(7) For bringing Shri Jani, Compounder of Popatpura at Ahmedabad,he obtained writing from the compounder under his control namely Shri Tribhovan Parmar by giving threats and mental torture and thereby committed misconduct of serious nature.

(8) Committed malpractice in reimbursement bills by prescribing outside medicines to the patients in large quantity.

An inquiry was conducted by Shri H M Parghi, Special Officer for Inquiry for Gazetted Officers, Ahmedabad in respect of both the aforesaid charge-sheets. The Inquiry Officer submitted his report dated 12.12.84 holding that charge nos.1,2,3,5 ofthe charge-sheet dated 14.4.83 were not proved and charge nos.4,6,7 and 8 were proved. So far as the charges of charge-sheet dated 20.3.80 were concerned, the same officer conducted the inquiry and he submitted his report dated 31st May 1983 and came to the conclusion that the charges levelled against the petitioner were proved. The Government was in agreement with such findings of the Inquiry Officer and took a tentative decison to reduce his pay by three stages in his pay scale and a show cause notice was also issued to the petitioner in respect thereof. The Government decided to impose punishment of reduction of pay by one increment and before taking any final decision, consultation was made with Gujarat Public Service Commission. Gujarat Public Service Commission vide its letter dated 31.12.86 has not accepted the proposal of the Government retiring the petitioner compulsorily and instead of that, two increments of the petitioner should be withheld with cumulative effect, while in other case, the Commission has agreed with the proposal of the Government for stoppage of one increment for one year. The Government in the impugned order considered the seriousness ofthe allegations and the recommendations of Gujarat Public Service Commission. It was observed by the Government that the Inquiry Officer has held that charge nos.4,6,7 and 8 were proved against the petitioner. The Government considered that it cannot be said that the said charges which were proved were not serious in nature i.e. allegation no.4 which were proved were serious in nature though the delinquent was called

in emergency case had not come and such act shows carelessness and serious in nature and such doctors cannot be continued in service. Other allegations also proved against him were also very serious like earlier allegations. Taking into consideration, seriousness of allegations proved against the petitioner and the facts and circumstances of the case, it was found that if punishment of compulsory retirement is imposed, the same would be sufficient. Hence, the Government finally decided to disagree with the Commission and to impose punishment of compulsory retirement by the impugned order.

3. In the charge-sheet dated 20.3.80, following charges have been made against the petitioner.

"Vide English Resolution No. GAD-1065-7 dated 27.10.65 of the Government of Gujarat in its Panchayat and Health Department,pay scales of the qualified Vaidyas were declared and in terms of the said resolution, Shri D.T.Joshi, former District Ayurved Officer, Class II, District Panchayat, during the years 1968-69 made applicable the said pay scales for the Vaidyas under the Ayurved Dispensaries of the District Panchayat, Rajkot with effect from 1.11.65 in the revised pay scale of Rs. 160-370, because of which, seven Vaidyas out of these Vaidyas who were possessing unqualified qualification in view of the directions issued vide letter of the Director bearing No. Ayu-C-18-10386-87 dated 11.11.58 were also considered in the qualification of Ayurved Visharad Qualified and pay scale of qualified Vaidyas were fixed and thereby committed serious administrative error and thereby caused huge financial loss to the Government."

Out of those seven Vaidyas, some of them filed a petition in this Court being Special Civil Application NO. 6728 of 1986 in which recovery of the amount was challenged. That special Civil Application was allowed and the respondents were directed to treat the petitioner as qualified Vaidyas and to determine pension of the petitioners of that case on the basis of last pay drawn by them, on the date of his retirement by an order dated 20th September, 1996. On the basis of that judgment, the learned counsel for the petitioner submitted that Bhurilal of Special Civil Application No. 6728 of 1986 was granted revised pay scale by the petitioner and that was considered by the Government that Bhurilal was not entitled for the revised pay scale as he was not a qualified Vaidya. But this Court declared him to be a qualified Vaidya by an order dated 20th September,1996 and his claim was allowed on the basis of the revised pay

scale which was granted by the petitioner at the relevant time. As such, the punishment of withholding one increment awarded by the Government is liable to be set aside as the petitioner's action was considered to be legal by this Court and he cannot be punished for that Act which has been considered bythis Court.

6. I have also considered the submissions of the learned counsel for the petitioner and I find great force in the submissions of the learned counsel for the petitioner inasmuch as the charge against the petitioner is in respect of revised pay scale given to seven Vaidyas who were lateron considered as unqualified by the Government for that pay scale. But this Court considering facts and circumstances has held that those Vaidyas who were held to be disqualified by the Government were qualified vaidyas and the pay scale granted by the petitioner to those Vaidyas was justified. In view of these facts and circumstances, the punishment of withholding of one increment of the petitioner awarded by the Government is not sustainable in the eye of law.

7. So far as the allegations made in the charge-sheet dated 14.4.83 are concerned,the Inquiry Officer found the charge nos. 4,6,7,8 were proved against the petitioner and rest were not proved at all against the petitioner. Item no. 4 of the said charge-sheet reads as under:

> "Though he is on duty for 24 hours as Resident Medical Officer, he has shown gross negligence and neglect and carelessness by not attending the emergency situation and thereby he has committed breach of rule 3(2) of the Gujarat State Service (Conduct) Rules, 1971."

In this respect,one Shakuntalaben Gayakwad, staff nurse has been examined to prove the allegations of this item against the petitioner. In her cross-examination she has stated that once upon a time,when a serious patient was brought in the hospital, she made a telephone call at the residence of Mr.Joshi. However, his wife lifted the phone and thereupon made a telephone call to Joshi at the private clinic Gayatri clinic and at that time, Mr. Joshi told her to ask the patient to go home. The witness informed the petitioner that the patient was serious. The petitioner told her that what he had told her should he done. In her cross-examination, this witness has admitted that her statement recorded on 29.8.80 was not read over to her. She also admitted that as and when the patient becomes serious, RMO was required

to be intimated by making an entry in the call book. In the statement,she has not stated that any entry was made in the call book in that regard and that call book is also not placed on record.

8. The submission of the learned counsel for the petitioner is that the charges in this respect are vague. No date or time is mentioned by the witness regarding the occasion when the petitioner was not found on duty. It is also not mentioned what was the name of the patient and what was the nature of seriousness or illness of the patient. No particulars or details have been provided by the Inquiry Officer or stated by the witness in this respect. Even the call book maintained for this purpose was not produced during the inquiry. Hence,the petitioner was not able to defend himself and he was not afforded an opportunity to defend himself which is against the principles of natural justice. As the charge was too vague and no details have been provided. The learned counsel for the petitioner also relied on the judgment in the case of Union of India vs. H.C.Goel reported in AIR 1964,SC, 364 wherein punishment of dismissal was set aside by the High Court and that decision of the High Court was affirmed by the Supreme Court holding that it was a case of no evidence but was based on suspicion only.

9. Thus, the submission of the learned counsel for the petitioner is that the charge is not based on any evidence and the petitioner has been denied an opportunity to meet out the allegations and to defend himself. Had it been a case that on a particular date, a particular patient had arrived in the hospital and the condition of that patient was serious and the petitioner was not found on duty, then it was open to the petitioner to defend himself by saying that he was present in the hospital or no such patient was admitted or had gone to the hospital. As in the present case, there are no particulars regarding time, date or name of the patient or seriousness even the call book has not been produced. An endorsement in that connection was necessary to be made in the call book. In these facts and circumstances, I am of the firm opinion that the charge is not proved against the petitioner due to complete vagueness of the charges and the petitioner has been denied an opportunity to defend himself in this respect which is against the principles of natural justice.

10. The next charge item no. 6 which is said to have been proved against the petitioner is quoted

below.

(6) Though he is not in the teaching staff of the Ayurved College, made unauthorised interference in the administrative matters of the College and created groupism amongst the students and thereby he has committed an act of misconduct as a Gazetted Officer.

In this respect, the learned counsel for the petitioner referred the statement of D.J.Patel, Retired Assistant Professor who stated that when students group clashed, Mr. Joshi took initiatives and settled their disputes. Since RMO had nothing to do with the academic career of college students, however he had taken interest to get the disputes settled amongst the students. In the cross-examination, the witness has stated that police had arrived at the site when the clash amongst students had taken place. The learned counsel for the petitioner submitted in this respect that the petitioner was the officer of the college, as guardian he settled the matter, can he be said to have committed an offence or which amounts to misconduct being an officer of the College ? What was his duty ? Was he required to see the incident as a spectator or should he allow the clash of students group to die themselves ? He further submitted that he was not only under a legal obligation, but also under moral obligation that he should do something which may settle the disputes and to put the clash or disputes of the students to an end. I have carefully considered this argument and I am of the firm belief that if any person being a superior officer of the collge settles the matters and solves the disputes between groups of students, he cannot be said to have indulged himself in creating groupism amongst students. Leaving aside legal obligations, he was morally bound to make such efforts to settle the matter. The findings of the authority below in this respect are not only perverse but also against legal obligation of the officer of the college and humanity. As such,this charge is also not proved against the petitioner.

9. The next charge is item no. 7 which is quoted below.

" (7) For bringing Shri Jani, compounder of Popatpura at Ahmedabad, he obtained writing from the compounder under his control namely Shri Tribhovan Parmar by giving threats and mental torture and thereby commited misconduct of serious nature."

In this respect, the learned counsel for the petitioner submitted that the compounder was said to have been pressurised by the petitioner to write down an application for transfer for which he gave threats and mental torture. But this act is said to have been committed about seven years' back. The compounder had never made a complaint to any authority in this regard. For the first time, Mr.Kasture recorded the statement of this compounder who stated after a period of seven years. Had the petitioner pressurised this Compounder, he must have made some complaint to any authority regarding threat or mental torture, but he never made any complaint in that respect for such a long period and due to this gross delay, this act cannot be treated as a misconduct. Only on the basis that some statement has been recorded, after a period of seven years,in my opinion, statement of the compounder against the the petitioner cannot be thrown out and at the most it can be said that the said act was not so serious at all as to tempt the compounder to inform or intimate or make any complaint before the authority concerned. As such this act may amount to misconduct in technical sense, not in terms as stated.

9. The next charge item no. 8 reads as under:

"(8) Committed malpractice in reimbursement bills by prescribing outside medicines to the patients in large quantity."

In this respect, the learned counsel for the petitioner submitted that this act has been inferred by the authorities concerned. The learned counsel for the petitioner submitted that the inquiry Officer has taken into consideration two aspects for coming to the conclusion that some malpractice was committed in reimbursing of bills by prescribing outside medicines. One is that some comparison was made regarding entries made in the register of reimbursement of bills. The benefit of reimbursement was given by Mr. Joshi for a period from January, 1980, total number of bills reimbursement of the patient checked in OPD for the month of January, 1980 came to about 75. Out of the said bills, the bills of the petitioner were asmuch as 50 in number whereas the bills prescribed by all the doctors outdoor as well as indoor of the colleges would together come to Rs.25000/-. The total amount of 50 bills of the petitioner reimbursed would come to Rs. 5073.37 ps. out of which the total bills amounting to Ajit Medical came to Rs. 4229.60ps. whereas the total value of other

stores came to Rs.8431.77 ps. The aforesaid figures showed that number of bills of Dr. Joshi were double than the bills and those other Doctors. The aforesaid were in respect of only Government servants or those employees entitled to reimbursement. The petitioner had not verified from the store whether those medicines which were prescribed to the patients were available in the stores or not and those medicines were prescribed bythe petitioner for the purpose of getting more commission. Mr. A K Patel had seen the petitioner accepting the commission amount from Ajit Medical Stores. But submission of the learned counsel for the petitioner is that the charge is said to have been proved on the basis of statistical data. In case more patients came to him and he prescribed prescriptions, can the petitioner be said to have committed an act which amounts to misconduct ? So far as the statement of Mr. A K Patel is concerned, the learned counsel for the petitioner submitted that Mr. A.K.Patel stated before the Inquiry Officer that he was watching more carefully the activities of Shri Joshi medicines from Akhand Anand hospital which were being taken away in bags and he saw persons who were taking away medicines. But he was unable to give names who accompanied him at the time when he kept watch on the petitioner. The witness also admitted in his statement that he had actually seen once taking or receiving the petitioner commission in his presence from Ajit Medical stores. At that time, he was with other persons when he was watching the petitioner receiving the commission from Ajit Medical stores, but he failed to give name of those persons who accompanied him. Thus, he saw only once the petitioner when money transaction took place.

10. The learned counsel for the petitioner submitted that it cannot be inferred that any amount taken by the petitioner from Ajit Medical Stores as commission at the time when the witness was watching. Thus, these are two different aspects which are not connected at all i.e. one is making prescription in more quantity and other is money transaction at one time between the petitioner and the medical store. It is not the case of the department that the petitioner issued prescription for the medicines which were available in the medical store and even then the petitioner issued the prescription for taking commission out of reimbursement or the petitioner issued false prescriptions for reimbursement.

I have considered the submissions made on behalf of the petitioner. I do not want to go into

reliability or veracity of the witnesses in this connection, whether he saw the petitioner taking money. From the aforesaid statement, it appears that the findings based on evidence of the entries made in the register as well as the eye witness account of the witness. It would be difficult to co-relate them with each other to come to a definite conclusion that the petitioner was receiving commission from Ajit Medical Stores on the basis of the prescriptions issued by him. In this connection, the learned counsel for the petitioner also submitted that had it been a case that the petitioner issued various prescriptions directing them to compulsorily purchase medicines from Ajit Medical and he was getting commission from that medical stores then such act ofthe petitioner would amount to misconduct. But in the facts and circumstances, there are two different aspects which cannot be connected with each other only on the basis of statistical datas. Even if it is assumed in respect of the eye witness account of the witness that he saw once taking some money from Ajit Medical Stores which is not co-related to prescription issued by him or their reimbursement. At the most it could be an act which cannot be termed as misconduct in strict sense. As such it would be an act which may amount to a technical misconduct.

10. The learned counsel for the petitioner submitted that findings of the Inquiry Officer with the proposed punishment were forwarded to the Public Service Commission by a letter dated 31.12.86 for approval/advice. Gujarat Public Service Commission considered the allegations made against him and the statements of the witnesses, the basis of evidence in support thereof or absence thereof and the aspect of period of incident meaning thereby duration when the incident took place and when the statements were taken by the Inquiry Officer, afte a period of more than seven years. The delay, gravity of the misconduct have been very carefully considered by the Public Service Commission and then after reviewing the Inquiry report, recommended for the punishment of withholding of two increments with cumulative effect instead of imposing punishment of compulsory retirement from service.

11. The Gujarat Public Service Commission is a statutory body and it was required under the statutory provisions of law to give opinion. The learned counsel for the petitioner submitted that whenever any advice, consultation is required from any legal authority, it may not be mandatory but it is substantial to be considered and he relied on a decision of the Supreme Court in the

case of Supreme Court Advocates on Record Association and others vs. Union of India reported in 1994, SC, 268 wherein it is held that consultation during the process in which advice is sought by the President cannot be easily brushed aside by an empty formality or futile exercise or a mere casual one attached with no sanctity. In the present case, Gujarat Public Service Commission being a statutory authority was required to give its advice under statutory provisions of law and that advice should not be brushed aside merely as a formality as done by the punishing authority in the present case. Deviation requires cogent and sound reasons. The punishing authority had made observations that as per the letter dated 31.12.1986, of Gujarat Public Service Commission, advised to withhold two increments ofthe petitioner with cumulative effect in respect of the charge-sheet dated 14.4.83. The punishing authority made observations that charge nos.4,6,7and 8 were proved against the petitioner and it cannot be said that the allegations which were proved against the petitioner were not of serious in nature such as allegation no. 4 which was proved as serious in nature though delinquent was called in emergeny case, he had not come. Such act shows carelessness and seriousness in nature and such doctor cannot be continued in Government service.

In this respect, with regard to charge no. 4, I have already observed that this charge has not been proved against thepetitioner on the ground of total and complete vagueness of the charge for which the petitioner could have no opportunity to defend him, being violative and against principles of natural justice. The charge was not proved against him. So far as the observations of the punishing authority regarding other acts of the petitioner, it was observed that two other allegations proved against him were also very much serious like earlier. In this respect, I have already observed above that charge nos. 4 and 6 have not been proved against the petitioner and the charge made in item no. 7 nd 8 are of technical in nature, in respect of them, saying that Gujarat Public Service Commission was not justified to recommend the punishment of withholding of two increments with cumulative effect. Instead, the said punishment is required to be substituted with that of withholding of two increments without future effect, as already by this Court that the charges proved against the petitioner are merely of technical nature. The punishing authority has not given substantial and cogent reasons for ignoring the recommendations made by Gujarat Public Service Commission. Deviation from general principles of law require substantial grounds,but in the

present case, the punishing authority has not given any substantial and cogent reasons to ignore the recommendations made by the Commission. Recommendations or advice of the commission is legally binding on the authorities concerned and the authority is bound to comply with the same in absence of sound and cogent reasons.

11. Thus, this petition is required to be allowed and the punishment of compulsory retirement imposed upon the petitioner is required to be quashed and set aside and the punishment of compulsory retirement is required to be substituted by that of withholding of two increments without future effect in order to avoid further litigation.

12. Accordingly, the petition is allowed in part. The impugned order of compulsory retirement dated 16th April,1987 passed by the respondent no. 2 is quashed and set aside. The respondents are directed to forthwith reinstate the petitioner in service with all consequential benefits and are further directed to pay arrears of pay and other allowances within a period of three months from the date of production of a certified copy of this order. The punishment of compulsory retirement is substituted by that of withholding of two increments without future effect. The suspension period of about four years during which the petitioner was under suspension is also directed to be regularised and the petitioner is ordered to be treated in service for that period. Rule is made absolute accordingly to the aforesaid extent, with no order as to costs.

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